

Licensing Board

January 24, 2005 - **Agenda**

View Minutes

* * *

PRESENT: **Guy Oliveira, Chairman**

Steven A. Beauregard, Commissioner

Nelson N. Ostiguy, Commissioner

Atty. Patrick Walsh, Asst. City Solicitor

MOTION TO ACCEPT THE MINUTES OF THE MEETING OF 12/27/04

APPROVALS RECEIVED FROM THE ALCOHOLIC BEVERAGES CONTROL COMMISSION

Transfer

Trinity Fare, LLC d/b/a Trinity, Kenneth J. Sylvia, Manager/Member, license formerly exercised on premises located on **ground floor of 651 Orchard Street** who is petitioning to **Transfer and Change Location** of said **Common Victualler (Restaurant) All Alcoholic Beverages License** to **Howland Mills Restaurant, Inc., John E. Williams**, President, Director and Shareholder; **Curtis J. Mello**, Treasurer, Clerk, Director and **Proposed Manager**. Premises consist of one (1) Dining Room, one (1) Kitchen, (1) Bar along with Stage and Dance Floor area on the **fourth floor** of a commercial building within an area approximately **33,000 sq. ft.** There are three (3) entrances / exits in the front of the building and also an emergency exit in the back of the building, and area is also accessible by elevator. Premises is situated on the West side of Orchard Street and **numbered 651 Orchard Street**.

Disapproved By ABCC 01/07/05 – Failure To Comply With Mass. Tax Laws.

Change of Manager

Portuguese American Athletic Club of N. B., Inc., 56 Holly Street, requesting approval of **Oscar Chaves**, residing at **165 Hatch Street, New Bedford, Ma.** as their **New Manager**.

Approved By ABCC 01/12/05

Change of Manager

Society of Senhor Da Pedra, Inc., 81 Tinkham Street, requesting approval of **Fernando Santo**, residing at **579 Bartlett Street, New Bedford, Ma.** as their **New Manager**.

Approved By ABCC 01/12/05

1. PETITION

Campos & Campos, Inc. d/b/a R & B Liquors, Rui J. Campos, Treasurer, who is **petitioning for a Change of Officer, Director, and Manager for a Retail Package Store All Alcoholic Beverages License** and to accept his resignation of same. **Sergio C. Campos** shall be named as New Treasurer, Secretary, Director and **Proposed New Manager**. Premises will remain the same at **189 Belleville Avenue**.

Application has been advertised

2. PETITION,

Costa & Sons Service Station, Inc. d/b/a Costa's Sunoco Mini-Mart, Benvinda DaCosta, President, who is **petitioning to transfer a Retail Package Store Wine & Malt Only Alcoholic Beverages License** to **MMRB Corporation d/b/a Costa's Sunoco Mini- Mart**. **Golan B. Chowdhury** is President, Treasurer, Clerk and **Sole Share Holder**; **Badiru Jaman** is Director and **Proposed Manager**; also, requesting a **Pledge of License and Stock** to **Costa & Sons Service Station, Inc.** to secure a **Promissory Note** in the amount of **\$195, 000.00** Premises will remain the same at **397 Sawyer Street**.

Application has been advertised

3. PETITION,

Duplex, Inc. Robert F. Brown, President, who is petitioning to **transfer a Common Victualler (Restaurant) All Alcoholic Beverages License** to **Brown Spirits, Inc.**

Robert F. Brown is President, Treasurer, Clerk Director, Co-Shareholder, and **Proposed Manager**; **Jennifer M. Brown** is Director and Co-Shareholder. Premises will remain the same at **40 Ruth Street**.

Application has been advertised

4. PETITION,

Neutral Zone, Inc. d/b/a Neutral Zone, 1846 Purchase Street, requesting approval of **David E. Rose**, residing at **60 Dartmouth Street** as their New Manager.

5. PETITION,

L.P.M.M., Inc. d/b/a The Tavern, Lionel P. Mello, President, who is **petitioning to transfer a Common Victualler (Restaurant) All Alcoholic Beverages License** to **Jose Colon Garcia d/b/a The Tavern**. **Jose Colon Garcia** is Licensee, Sole Owner and **Proposed Manager**; Premises will remain the same at **858 Brock Avenue**.

Application has been advertised

6. APPLICATION, *(No Representation Needed.)*

AHA! / Downtown New Bedford, Inc. Margie Butler, Program Director requesting approval of an

application for a **Special One Day All Alcoholic Beverage License** for their “Annual Ha! Ha! For AHA! Comedy Night Benefit Fundraiser” to be held at **Gallery X** located at **169 William Street** on **Saturday, January 29, 2005 from 7:00pm until 11:00pm.**

7. CORRESPONDENCE.

From: Guy a. Sasso, Dir., Seizure Unit, Commonwealth of Mass. D.O.R. dated 11/30/04 received – 11/30/04

Re: Whaler’s Edge, Inc. **37 Union Street**

Pursuant to the authority of Section 56 of Chapter 62c of the General Laws and by virtue of a levy placed in my hands for execution by the Commissioner, Department of Revenue, I have seized the following described property for nonpayment of delinquent Massachusetts’s taxes.

Due From: Whaler’s Edge, Inc., 119 Highland Shores Drive, Wareham, Ma. 02571

In the Amount of: \$31,591.33

Description of Property: All Alcoholic Liquor License

Served & Received November 30, 2004 @ 12:40 P. M.

VOTED: To Receive & Place on File – Unanimous – 12/27/04 Meeting.

ACTION TAKEN: The above ‘**Auction of License**’ was executed at **11:10AM on January 6, 2005 in Room 314, Municipal Building**, by **Michael Purcell, Auctioneer** and a representative of the D.O. R. and was witnessed by Commissioner Beauregard and Nick Nanopoulos, Admin. N. B. Lic. Bd. The advertised public auction of the **7-Day All Alcoholic Beverage License** was opened to bid to Four (4) registered bidders. **Myron Gerber**, residing at 50 Church Street, Fairhaven, Ma, submitted the high bid of **\$32, 000.00**. Mr. Gerber was given an application for transfer, **which must be returned to the Office of the Licensing Board for approval February 14, 2005, which was included in the terms of the auction.**

8. REQUEST, (No Representation Needed.)

Sohrab Vafae, Licensee, Best Choice Autos Sales, a Motor Vehicle Class II – used car dealership – with premises situated at **116-122 Dartmouth Street**, requesting approval to **change the description of the licensed premises** to include an increase from Thirty (30) vehicles

to Thirty – Five (35) for display on premises.

VOTE: Approved for Thirty-Five (35) Autos by Inspectional Services.

9. REQUEST,

Nabih M. Hamdan, residing at **1027 Forbes Street, N. B. Ma**, is requesting to appear before the Licensing Board to present a proposal for a **Motor Vehicle Class II License – (Wholesaling Only)**.

Note: M.G.L. Ch. 90 states that ‘Personal Living Quarters’ cannot be the site of a Class II dealer’s business; even a dealer who does business solely on a wholesale basis must have a facility dedicated to carrying out the dealer’s business; Such a dealer need not, however have a display area, post a sign, or be open to the public but must post and maintain reasonable hours so that state and local police can accomplish the required facility and record book checks.

10. APPLICATION,

Jesus Mendoza, residing at **177 Shawmut Avenue, N. B. Ma**, is requesting approval of his application for a **Motor Vehicle Class II (Used Car Dealer) License for Matos Auto Sales**, with premises situated at **20 Grandfield Street**. Application includes a plan of the premises.

Approval of the Motor Vehicle Class II License will require a **Business Certificate** registering the name of the business from the office of the City Clerk, a **‘current’ Certificate of Inspection** from the office of Inspectional Services, a **\$25,000.00 Bond** and a **Notarized Letter** stating where repairs will be done.

Note: Site was licensed to Eautosport.Com, Gary Pires, Licensee and was licensed for Five (5) Autos for display; License was surrendered on 12/29/04. Inspectional Services has approved location for Sixteen (16) cars for display.

Tabled At 11/27/04 Meeting

11. APPLICATION,

Wayne Hilderbran, residing at **2 Abraham Avenue, E. Freetown, Ma**, and **Michael J. Medeiros**, residing at **599 Cottage Street, N.B. Ma**, are requesting approval of their application for a **Motor Vehicle Class II (Used Car Dealer) License for MM Auto Sales**, with premises situated at **953 Shawmut Avenue**. Application includes a plan of the premises.

Approval of the Motor Vehicle Class II License will require a **Business Certificate** registering the name of the business from the office of the City Clerk, a **‘current’ Certificate of Inspection** from the office of Inspectional Services, a **\$25,000.00 Bond** and a **Notarized Letter** stating where repairs will be done.

Note: Site was licensed to Wayne’s Auto Sales, Wayne Hilderbran, Licensee and was licensed for Three (3) Autos for display; License was not approved for renewal by Chairman Oliveira for failing to meet new Class II requirements which included Exterior Sign, Posted Hours, and area not operated and maintained in a neat, clean, and proper

condition; also building currently for sale.

Minutes From 11/27/04 Meeting

PRESENT: Wayne Hilderbran and Michael J. Medeiros, Applicants

Mr. Hilderbran was informed by the Board that his '2004' license was disapproved for renewal by Chairman Oliveira for the reasons stated above after an on site inspection by the Chairman and that he was applying for a license under a different name for the same location. The Board stated its unanimous opinion that the premises located at 953 Shawmut Avenue was not in their opinion a suitable location at this time and that the building was for sale.

They also questioned why they have never seen any cars on the lot for display and asked if he maintained a logbook and how many cars he sold in the past year. He was also informed that Mr. Thatcher, Director of Inspectional Services had serious concerns regarding that location.

Mr. Hilderbran stated that he hadn't sold that many cars from the lot but that he did a lot of wholesaling of cars. With regards to the premises, he stated that he had cleaned up the lot.

VOTED: To Table the matter to our next meeting (12/27/04) and request that Mr. Hilderbran appear and submit his sales book for review by the Board at that meeting; also he must contact Mr. Thatcher to discuss any concerns that he may have with that location. – **Unanimous**.

TABLED AT 12/27/04 MEETING

12. Hearing Re: Rio Café, Inc, d/b/a Rio Cafe

Cesar Rodrigues, Manager

70-76 Church Street

New Bedford, MA, 02746

Please Be Advised that your presence is requested at a hearing to be held in this office at which time you are required to submit documentation to the Board of records of your **Liquor sales and Food sales** for the period **01/01/04-12/01/04** for their review under N. B. Licensing Board Reg. # 4.

Minutes From 12/27/04 Meeting

PRESENT: Atty. Kellie Martin Representing Cesar Rodrigues, Manager, Kelly Downing, and Stacy Sampo.

Prior to any testimony given Atty. Martin stated that she had difficulty obtaining a copy of the Police Report and stated that she hadn't had time to review them and would at this time respectfully request that the matter be tabled to the Board's next meeting (01/24/05).

Commissioner Beauregard asked if Mr. Rodrigues was prepared to submit paperwork regarding the request that was made by the Board in **Item #18**.

Mr. Rodrigues stated that he had not seen that paperwork and Atty. Martin stated that she was unaware of it also, despite the fact that a signed receipt copy served the same day as Item #19 was on file.

VOTED: To approve the request of Atty. Martin to table hearing to later date and place matter on 01/24/05 Agenda – Unanimous.

TABLED AT 12/27/04 MEETING

13. Hearing Re: Rio Café, Inc, d/b/a Rio Cafe

Cesar Rodrigues, Manager

70-76 Church Street

New Bedford, MA, 02746

Your presence is requested at a hearing to be held in this office to determine while on **Probation (11/06/04-11/12/04)** whether you have violated certain provisions of Massachusetts General Laws (MGL), the Alcoholic Beverages Control Commission (ABCC) Regulations, and Licensing Board Rules and Regulations as reported by City of New Bedford Police Department Incident Report as follows:

Violations: Massachusetts General Laws Chapter 138, sections 34, 34b, 34c-

It is illegal for anyone under the age of twenty-one years to purchase or be in possession of an alcoholic beverage; identification must be checked on the day of service;

Alcoholic Beverages Control Commission Regulation 204CMR2.05:(2)-

States no licensee shall permit any illegality to occur on the licensed premises. The licensee is responsible, whether present or not, for ensuring that no disorder, disturbance, or illegality takes place in or on a licensed premises;

Licensing Board Regulation No. 5, 12, 41, 43, Under “21”Reg., June 3, 1996, 36-

Sale of alcoholic, wine and malt beverages to a person under twenty-one(21) years of age is prohibited.

Premises must at all times be kept safe...

The type and hours of entertainment shall be subject to reasonable regulations by the Licensing Board.

It is forbidden for a licensee to employ or permit any person to obscenely wear or use any device or covering exposed to view which stimulates the breasts, buttocks,... or any parts thereof.

Regulation bans any “Under 21 Club” in the City of New Bedford and any “ Under 21

Night/Party” in any liquor licensed establishment in the City of New Bedford.

Licenses are subject to suspension, revocation, or forfeiture, after hearing for breach of any of the listed regulations or any law of the Commonwealth.

New Bedford Code of Ordinances 15-96

Exclusion of minors from liquor establishments during entertainment;

No person under the age provided in M.G.L. shall be present or go upon premises licensed for the sale of alcoholic beverages, if premises are or should be, licensed for entertainment, while entertainment is being offered thereon.

Summary of Incident Report:

Police Department Incident Report states that Officer’s were dispatched to **76 Church Street (Rio Café)** regarding a disturbance and while in route-received a 2nd call regarding a large group outside fighting. The following was reported to the Officer’s during their investigation: 1.) Two (2) people had been assaulted and hit by a car as it sped off; 2.) At least Two (2) underage females (20 yrs. old) were drinking and participated in a wet t-shirt contest inside the Rio Café; 3.) After speaking to Mr. Rodrigues (who at first stated the floor was wet from mopping) stated that he had a “College Type Party” that night with a pool setup for a wet t-shirt contest; One of the victims of the hit and run stated that the Rio has a wet t-shirt contest every week and the event is spread by word of mouth.

Date and time of alleged violations: Monday, November 8, 2004 @ approximately 1:49 A. M.

2004 – 20969 – 11/08/04

Minutes From 12/27/04 Meeting

PRESENT: Atty. Kellie Martin Representing Cesar Rodrigues, Manager, Kelly Downing, and Stacy Sampio.

VOTED: To approve the request of Atty. Martin to table hearing to later date and place matter on 01/24/05
Agenda – Unanimous.

CORRESPONDENCE

From: Eddie J. Jenkins, Chairman, for the ABCC dated 12/29/04 received –
01/03/05

Re: Zully’s Wine & Spirits, Inc. 1240 Kempton Street

NOTICE OF HEARING – TUESDAY, FEBRUARY 22, 2005 @ 9:30 A.M., for a hearing to determine whether you have violated certain provisions of **M.G.L. or Commission regulation** as follows: **Ch.138, Sec.34 – Sale or Delivery of an Alcoholic Beverage to a Person Under 21**

Years of Age. (1 Count)

Date and Time of Alleged Violations: Wednesday, December 8, 2004 at Approximately 6:20 pm.

From: Paul M. Douglas, Deputy Sheriff, for the County of Bristol, Ma. dated 01/12/05 received – 01/12/05

Re: Dream Café, Inc. 1218 Acushnet Avenue

WRIT OF EXECUTION – 0927/04, regarding ‘case name’ - Donald Perry, Esq. vs. Dream Café, Inc. notice of judgment in the amount of \$2,164.75 (EXECUTION TOTAL) – Liquor License has been attached for said amount.

From: Terry Pereira, Advertising Manager, for the Standard Times. dated 01/12/05 received – 01/18/05

Re: Advertising Fees

The cost of legal notices regarding licensing will be increasing effective February 1, 2005. The current cost of these ads is currently a flat rate of \$79.50. The new cost will be a flat cost of \$125.00.

- **CLUBS SERVING ALCOHOL WITHOUT LICENSE (Informational Only)**
 - **Sporting Soccer Club, 248 North Front Street (Informational Only)**

A request for filing of a **Home Rule Petition** to grant a liquor license to the ‘Club’ is currently in the **Committee of Appointments and Briefings** awaiting a meeting date to be heard in Committee before being reported out to the City Council for approval to send to the State Legislator - (**Memo Dated 12/02/04 – Rec’d 01/07/05**).

- **6 Hathaway Street – on top floor of Auto Globe Auto Body & Sales – It has been reported, inspected and noted that the 2nd floor of said establishment is being used as a ‘Sports Bar/ Club’. This is a violation of **Local Zoning Law#5110 Permits** and **M.S. B. C. 780 CMR 120.0 Certificate of Occupancy**. This is also a violation of **M.S.B. C. 110.1 Permits. Serving alcohol** within this establishment is a violation of **M.G.L. CH.138, sec12 – Licensing**.**
- **REVIEW COMPLAINTS / POLICE DEPARTMENT INCIDENT REPORT**

NAME
DECISION

Police Report

DATE

VIOLATION

1. Bar 908

2004 – 23213

12/18/04

Assault & Battery

W/ Dangerous Weapon

2. **Campino Café** **2005 – 00074** **01/02/05** **DUI/Negligence**

- **STATE IMPOSED SMOKING BAN – (Informational Only)**
- **AUTO REPAIR SHOPS – (Informational Only)**
- **Subject: Liquor License Renewals For 2005**

Liquor License Renewals for 2005 by category and totals per, which were issued and signed by the Board in the month of December 2004.

Common Victualler—All Alcoholic	85
Common Victualler---Wine & Malt (6 Days)	5
Common Victualler---Wine & Malt (7 Days)	14
General on –Premise All Alcoholic	21
Clubs----All Alcoholic	28
Retail Package Stores---All Alcoholic	24
Retail Package Stores-- Wine & Malt	8
Innholder All- Alcoholic	1
TOTAL=	186

The following license was not renewed for 2005:

1. New Bedford Pharmacy----Business Closed----Did Not Renew---Druggist All Alcohol (Non-Transferable)

- **NEXT TWO (2) MEETING DATES: February 28 & March 28**
- **MEETING ADJOURNED:**